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MF

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/180,374 | 04/12/99 | RITTER | LEVERCOXX |

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PATENT DEPARTMENT
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IM22/1215

| EXAMINER |
|----------|
| PADEN, C |

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1761 | 8 |

DATE MAILED: 12/15/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/180374

Applicant(s)

Ritter

Examiner

Paden

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P r i d f r Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10-25-99
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disp sition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachm nt(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 7
- ☐ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Acti n Summary

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1, 2, 4, 5, 6, 9 and 10 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Moreau et al.

Moreau discloses a corn fiber oil that contains 73% fat, 8% sterol esters, 4% free sterols, 6% diacylglycerols and 6% ferulate sterol esters.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jandacek (1,413,102) in view of Moreau.

Jandacek discloses edible oils having hypocholesterolemic properties. Here the oil is fortified with 2 to 6% plant sterol. The oils contemplated for use in the product include clear, liquid glyceride oils and pure triglycerides (see page 1, column 2, lines 97-117). The foods prepared from the oil include peanut butter, mayonnaise, ice cream and margarine spreads. At page 3, column 2, lines 37-40 the inclusion of a monoglyceride is indicated. The claims appear to

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differ from Jandacek in the recitation of the inclusion of a sterol ester. Moreau teaches that corn fiber oil contains 8% sterol esters, 4% free sterols and 6% ferulate sterol ester. It would be obvious to one of ordinary skill in the art to select the corn fiber oil of Moreau as the edible oil product of Jandacek in order to prepare a food product having hypocholesterolemic properties. In this case applicant is merely selecting a known oil for use in a food product for a known purpose. It is appreciated that the particular Stevens value of claim 8 is not indicated but to prepare a margarine of Jandacek with an appropriate Stevens value is seen to be within the determination of one of ordinary skill in the margarine art.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim 5 as to what is intended by the recitation "similar to that of the sterol applied" because it is unclear what the sterol applied is.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jandacek in view of Moreau as applied to claims 1-6 and 9-12 above, and further in view of Cherukuri.

The claims appear to differ from Jandacek in view of Moreau in the recitation of the presence of oryzanol. Cherukuri teaches that oryzanol is an inherent component of rice bran oil. It would be obvious to one of ordinary skill in the art to use the rice bran oil of Cherukuri in the composition of Jandacek for its antioxidant properties in preserving the composition of Jandacek and also in providing an oil source for the composition of Jandacek.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Paden whose telephone number is (703) 308-3294. The examiner can normally be reached on Monday to Friday from 8:30 to 4:00.

The fax phone number for this Group is (703) 305-3599 or 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



CAROLYN PADEN 12-14-99
PRIMARY EXAMINER
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